

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

THE SMUCKER COMPANY

Employer

and

Case 9-RC-18059

TEAMSTERS LOCAL UNION NO. 651

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

I. INTRODUCTION

The Employer is engaged in the production of peanut butter as well as jams, jellies, preserves and ice cream toppings at its Lexington, Kentucky facility, the only facility involved in this proceeding, where it employs approximately 177 hourly technicians and 18 managers. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit comprised of all production and maintenance employees, excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act. There is no history of collective bargaining affecting any of the employees involved in this proceeding. The Petitioner has agreed to proceed to an election in any unit found appropriate.

The parties stipulated at the hearing that an appropriate bargaining unit should include all A and B level technicians, including "admin" techs and lab operators. The parties further stipulated that the Plant Administrative Coordinator should be excluded as a confidential employee. The principal issues over which the parties disagree are the supervisory status of the team leaders and zone coordinators and whether employees in the rotational site and extended site roles share a sufficient community of interest with other employees to warrant their inclusion in the unit. The Petitioner, contrary to the Employer, asserts that the team leaders and zone coordinators are supervisors within the meaning of Section 2(11) of the Act and thus should be excluded from any unit found appropriate. Although the Petitioner initially stipulated to the inclusion of the rotational site roles, it subsequently sought the exclusion of employees in both the rotational site and extended site roles, asserting that they lack a sufficient community of interest with the unit employees. Contrary to the Petitioner, the Employer asserts that none of these employees are supervisors and, because of the unique functional integration of its operations, all employees, including those presently in rotational and extended site roles, share a community of interest and must be included in any unit found appropriate.

As more fully explained below, I find that the team leaders and zone coordinators are not supervisors within the meaning of the Act and, therefore, are properly included in the unit. I have further concluded that the employees in the rotational site and extended site roles, with the exception of the Finance Capital Invoice Approval rotational role and the Jif Cost/Financial Accountant, the HS & E Program Leader, the Plant Buyer and the Payroll/Benefits Coordinator extended role, share a sufficient community of interest with employees in the unit found appropriate to require their inclusion in the unit. The employees in the other enumerated positions along with the Plant Administrative Coordinator, are excluded from the unit as lacking a sufficient community of interest requiring their inclusion with the unit employees.

In reaching my determination on these issues, I have considered the record evidence as a whole as well as the arguments made by the parties at the hearing and in their post-hearing briefs. In explaining how I came to my determination on these issues, I will first describe the Employer's operations and then analyze the issues in relation to applicable legal precedent.

II. OVERVIEW OF OPERATIONS AND EMPLOYMENT FACTS

The Employer's operations consist of three main departments in which the floor or "core" jobs are performed: the process department where the products are made; the packaging department where the peanut butter is prepared for distribution; and the logistics department from which the finished product is shipped. The work force of each department is divided into four teams, with about 12 employees comprising a team. Employees or "technicians" are classified by skill level. Non-managerial employees are hired in as "A" level technicians and develop various skills, while on the job, enabling them to bid into other positions throughout the facility, including the "off-line site roles," whose unit placement is in dispute. Employees who possess an "A level" classification can operate a particular machine while employees with "B level" skills also have the ability to repair or perform enhanced maintenance on equipment. Zone coordinators are "B" level technicians who have developed skilled maintenance expertise.

The team "roles" or jobs for all three departments include: Team Leader, "Admin," Safety, Sanitation, Training and Quality. The team leaders are responsible for overseeing a particular team's job assignments and insuring completion of the department's daily work. The supervisory hierarchy for the Process and Packing Departments are the same: a department manager, assisted by two team managers, supervises the team leaders and technicians. Zone coordinators may report directly to the department manager or the team manager. The process department manager and the packing department manager report to the operations manager, who in turn, reports to the plant manager. The Logistics Department includes team leaders and technicians who report directly to the department manager who is directly responsible to the plant manager.

All employees may bid on "off-line site roles," which are divided into two categories: Site Rotational roles, where employees may work for a period up to 3 years and then are required to return to their "core" jobs for at least 1 year, and Site Extended roles which have no time limitation and where employees may remain as long as they desire. The site roles do not always involve work directly related to the production, handling or shipping of the product. In addition, all employees, including the team leaders and the zone coordinators, may volunteer for duties in which they work with the off-line site role employees. For instance, employee technicians may and do participate in the interviewing of applicants and the scheduling of work.

The parties stipulated, and the record shows, that all of the A and B level technicians as well as the zone coordinators, team leaders and those individuals employed in off-line site roles are hourly paid; enjoy the same health insurance plan and fringe benefits; (with some variation based upon seniority and employment history with prior plant owner); and are hired using the same criteria. They are subject to the same personnel policies and have access to and use the same lunchroom, breakrooms, and restroom facilities. All employees use the same parking lot and common entries into the plant; are connected to a common computer and e-mail system; and have the same holidays and employee celebrations. All employees are required to obtain managerial approval for their time sheets.

The Supervisory Issues:

As previously noted, the Petitioner contends that the team leaders and zone coordinators are supervisors within the meaning of Section 2(11) of the Act and thus should be excluded from the unit. The Petitioner cites certain provisions of the Employer's handbook which specifies that team leaders as well as zone coordinators may "initiate discipline" and argues that such authority renders them supervisors under the Act. In its brief, the Petitioner also argues that the team leaders and zone coordinators responsibly direct the work of employees, thereby making them supervisors within the meaning of the Act.

Overview of Legal Precedent:

Section 2(11) of the Act provides:

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of anyone of the authorities listed is sufficient to place an individual invested with such authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied, 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and in a non-routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of Section 2(11) authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). The exercise of such authority must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). In this regard, the Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the

protection of the Act. See, e.g., *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999), *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997).

The burden of proving supervisory status lies with the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Arlington Masonry Supply*, 339 NLRB 817; *Michigan Masonic Home*, 332 NLRB 1409. As a general matter, I observe that for a party to satisfy the burden of proving supervisory status, it must do so by “a preponderance of the credible evidence.” *Star Trek: The Experience*, 334 NLRB 246, 251 (2001). The preponderance of the evidence standard requires the trier of the fact “to believe that the existence of a fact is more probable than its non-existence before the [trier] may find in favor of the party who has the burden to persuade the [trier] of the fact’s existence.” In *re Winship*, 397 U.S. 358, 371-372 (1970). Accordingly, any lack of evidence in the record is construed against the party asserting supervisory status. See, *Williamette Industries, Inc.*, 336 NLRB 743 (2001); *Michigan Masonic Home*, 332 NLRB at 1409. Moreover, “[w]henver the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Consequently, mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Team Leaders:

The job description of the team leaders discloses that they work on the shift with their team; are responsible for the results of their team; and coordinate activities of all personnel on their shift to ensure that the desired results are delivered. They are responsible for the administration and completion of the team’s preventive maintenance plan. They also plan team development and training and resolve conflicts on their respective team and between teams. They “consult with and recommend discipline” to their managers and “enforce expectations.” Their job description also specifies that they “cover core work on as-needed basis,” and the evidence shows that they may spend as much as 90 percent of their time doing the same work as the other technicians on their team.

The evidence shows that even though team leaders are allowed to “initiate” or “recommend” discipline, the actual decisions regarding disciplinary imposition are made independently by the team managers. Although the team leader may “report poor performance or misconduct,” **as do the other technicians**, the evidence clearly establishes that the managers investigate the facts on their own and use their independent judgment as to whether discipline is appropriate. Merely reporting poor performance or misconduct does not establish that an individual is a supervisor within the meaning of the Act. *Williamette Industries, Inc.*, 336 NLRB at 743. The Employer’s employee handbook further specifies that only direct managers may impose the first disciplinary step under the policy. The testimonial evidence provided by the Petitioner’s witnesses does not establish any example or record of disciplinary action imposed based upon the independent judgment of a team leader. Indeed, for the most part, the employee witnesses acknowledged they knew of no disciplinary action issued by a team leader and that the team leader’s role in recommending an employee for discipline was limited to giving “input” into the matter.

With regard to the Petitioner's argument in its brief that the team leaders responsibly direct the work of their fellow technicians, the Petitioner primarily refers to and relies upon the responsibilities in the above-quoted job descriptions for the team leaders, but the Petitioner failed to present any evidence that these duties rise to the supervisory level of the authority contemplated by the Act. Rather, as a whole, the record establishes that the duties of team leaders are aligned with the traditional role referred to as a "working foreman" and not with that of supervisor within the meaning of Section 2(11) of the Act.

Based on the foregoing, and the record as a whole, I find that the Petitioner has not met its burden of showing that the team leaders are supervisors within the meaning of the Act. Accordingly, I will include them in the unit found appropriate.

Zone Coordinators:

Ten of the eleven zone coordinator positions are filled presently and are located in the Process and Packing departments. The Petitioner takes the position that zone coordinators should be excluded from the unit because they exercise supervisory authority based upon the provision in the Employer's handbook indicating that zone coordinators may initiate discipline. Although zone coordinators, like team leaders and other technicians, may "report" misconduct or unsatisfactory work, the evidence discloses that they make no independent decisions with regard to discipline. Rather, the "report" is merely passed to the managerial staff and is taken under consideration and a decision made on the basis of the manager's own independent investigation of the matter. Accordingly, the "initiating discipline" language in the handbook is not sufficient to establish that the zone coordinators are supervisors within the meaning of the Act.

Zone coordinators, who are responsible for directing and overseeing the maintenance work of B technicians, achieve the position by obtaining and maintaining superior maintenance skills. The Employer does not have a separately classified group of maintenance employees. The B level technicians who advance to higher levels of maintenance expertise may become zone coordinators who have the primary responsibility for maintaining a group or "zone" of machinery. The zone coordinators are available for consultation during the shift and off hours to assist with a maintenance problem that a B technician cannot handle. They also help train B level technicians in using equipment and in keeping the machinery properly maintained. In sum, their primary responsibility is to maintain a certain zone's machinery and oversee the technical aspects of installing new machinery and parts on the equipment in that zone.

The Petitioner argues in its brief that zone coordinators direct and oversee the maintenance work of B level technicians; however, it does not cite any particular example of such direction and/or supervision. Based on the record as a whole, I find that the zone coordinators' oversight and direction of work is related to machine installation and maintenance and does not encompass the type of authority envisioned by Section 2(11) of the Act. Accordingly, I find that the zone coordinators are not supervisors within the meaning of Section 2(11) of the Act and I will include them in the unit.

Off-line Site Roles (Rotational and Extended):

The Petitioner takes the position that employees filling off-line site roles, both rotational and extended, should be excluded from the unit. Technicians may bid on and serve in support of

“off-line” roles. Many of the functions of the off-line roles (both rotational and extended) are similar to the jobs performed by plant clericals, office staff and even highly-skilled level maintenance employees in traditional factory settings.

The rotational role exists for a 3-year period at the end of which the employee must rotate back into a core job for at least 1 year before being eligible to bid on another rotational position. An exception may occur if a rotational employee bids on an extended role directly from a rotational role. Employees in extended roles may remain in that position on a permanent basis. Employees working in all off-site roles may still retain their skill levels on core jobs and work from time to time in core jobs in which they have the requisite skill level. The amount of time which any off-line role employee might spend on the floor depends on the volume of work in the off-line job, the production requirements of the floor and the willingness of the employee to work overtime or as needed. The record shows that from February through April 2006, a number of off-line role employees were regularly scheduled for work in “core” jobs due to a reduction in the available workforce. The employees working in the off-line site roles have worked and been trained in the various departments to develop the skills necessary for the off-line jobs. As a result, the Employer does not hire employees to fill traditional clerical jobs since they are performed by the off-line employees who have trained and bid from their core positions. Accordingly, off-line site employees, except those who perform office duties, share a community of interest with the technicians beyond that usually found in more traditional work settings where job duties are clearly delineated and fixed for certain positions. The specific roles or job positions in dispute are discussed in detail below, applying the community of interest factors relied on by the Board in considering the unit placement of such employees.

The fact that two or more groups of employees engage in different processes does not by itself render a combined unit inappropriate if there is a sufficient community of interest among all of the employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). Many considerations enter into a finding of a community of interest including: (1) degree of functional integration, *Publix Super Markets, Inc.*, 343 NLRB No. 109 (2004); *United Rentals, Inc.*, 341 NLRB No. 72 (2004); *United Operations, Inc.*, 338 NLRB 123 (2002); (2) common supervision of the employees, *United Rentals, Inc.*, 341 NLRB No. 72 (2004); *Bradley Steel, Inc.*, 343 NLRB No. 22 (2004); *United Operations, Inc.*, supra; *Associated Milk Producers*, 250 NLRB 1407 (1970); *Sears, Roebuck & Co.*, 191 NLRB 398 (1971); *Donald Carroll Metals*, 185 NLRB 409 (1970); *Dean Witter & Co.*, 189 NLRB 785 (1971); *Harron Communications*, 308 NLRB 62 (1992); *Transerv Systems*, supra; *Sears, Roebuck & Co.*, 319 NLRB 607 (1995); (3) the nature of employee skills and functions, *United Operations, Inc.*, supra; *Overnite Transportation Co.*, 331 NLRB 662 (2000); (4) interchangeability and contact among employees, *United Rentals*, supra; *J. C. Penney*, supra; *Associated Milk Producers*, supra; *Purity Supreme, Inc.*, 197 NLRB 915 (1972); *Gray Drug Stores*, 197 NLRB 924 (1972); *Michigan Bell Telephone Co.*, 192 NLRB 1212 (1971); and (5) their commonality of wages, hours and other working conditions, including fringe benefits. *United Rentals*, supra; *Allied Gear & Machine Co.*, 250 NLRB 679 (1980); *Sears, Roebuck & Co.*, supra; *Donald Carroll Metals*, supra. Moreover, the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination. *International Paper Co.*, 96 NLRB 295, 298 fn. 7 (1951).

The Board, for example, generally excludes office clerical employees from overall production and maintenance units. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127, 1129 (1971); *Westinghouse Electric Corp.*, 118 NLRB 1043 (1957). However, plant clerical employees are customarily included in such units because they generally share a community of interest with production employees. *Raytee Co.*, 228 NLRB 646 (1977); *Armour and Co.*, 119 NLRB 623 (1957). Thus, “Clericals whose principal functions and duties relate to the general office operations and are performed within the office itself are office clericals who do not have a close community of interest with a production unit.” *Mitchellace, Inc.*, 314 NLRB 536, 537 (1994). In contrast, the Board has consistently included plant/warehouse clerical employees in overall production or warehouse units where the duties performed by such clericals are integral to the functioning of the production and/or warehouse operations and the clericals regularly interact with other unit employees in the course of performing these duties. See, *Fleming Foods, Inc.*, 313 NLRB 948-949 (1994); *Columbia Textile Services, Inc.*, 293 NLRB 1034, 1037 (1989). Typical plant/warehouse clerical duties include maintaining and verifying inventory, formulating documents to facilitate production and dealing with matters associated with shipment of product. See, e.g., *Fleming Foods, Inc.*, supra; *Columbia Textile Services, Inc.*, supra; *Hamilton Halter Co.*, 270 NLRB 331 (1984). In contrast, typical office clerical duties include handling billing, payroll, phone and mail. See, e.g., *Dunham’s Athleisure Corp.*, 311 NLRB 175 (1993).

The Integrated Planner Role Position:

Matt Ware serves in this position on an extended basis while Phyllis Logdon and Tim Hutchens fill this position on a rotational basis, one of which is pending transition to an extended role. In essence, these employees are inventory clerks and perform a support function for the core work. Their duties include checking the inventory, monitoring the production schedule, gathering information from the floor and deciding whether to order more materials, e.g., whether there are enough labels for “creamy” designation of peanut butter. They are also responsible for the software system which tracks the inventory and for completing and sending the material delivery schedules to vendors. Although they, as do virtually all of the technicians, occasionally perform other duties and have other responsibilities, the evidence as a whole establishes that their primary function involves inventory-related duties.

Based on the foregoing and the record as a whole, I conclude that the integrated role employees’ duties are directly related to and integrated with the functional operation of making, packaging and shipping the Employer’s primary product. Their job is similar to a traditional plant clerical position and the employees in this position share a community of interest with the core employees. Therefore, I will include the integrated role positions in the appropriate unit.

Process Maintenance Planner, Packing Maintenance Planner and Shipment Planner Roles:

The Process Maintenance Planner, Packing Maintenance Planner and Shipment Planner are rotational off-line roles currently held by Davis Reynolds, Linda Rushing and Mike Debord, respectively. They perform related and similar functions for the Process, Packaging and Logistics Departments. The record shows that Reynolds develops reports which he communicates to the teams or the zone coordinators, performs other team functions as needed and provides relief on the floor. He has some responsibility for maintaining the equipment in his department and reports to the Process Department manager and department team managers.

The job description for the Packing Planner (Rushing) discloses that she provides resource support for the zone coordinators, team leaders and others who assist with maintenance and down time activities as well as tracks major and minor stops of equipment. The Shipping Planner (Debord) must understand and communicate how packing, finishing and utilities are functioning on a daily basis and follow up on issues involving shipping of the product.

The record evidence with regard to these three positions is not extensive but does show that, like the Integrated Planner roles, these employees share a community of interest with the other technicians working on the floor and that their jobs are functionally integrated with those floor functions. Thus, they share a sufficient community of interest with the other unit employees to require their inclusion in the unit. Accordingly, I find that the process maintenance planner, packing maintenance planner and shipment planner are properly included in the unit.

Plant Store Room Coordinator, Peanut Systems Leader, and Peanut and Byproducts Coordinator:

These roles, like the Integrated Planner Roles, involve inventory control. Ernie Bain is the extended role Plant Store Room Coordinator. He maintains, and orders parts to replenish, the store room inventory. He ensures that the labels are correct and enters data into the system, which is designated as the “data stream,” that he uses to check parts. He also trains others in use of the system and performs a minimal amount of work on the floor. The Peanut Systems Leader, a rotational role occupied by Denice Burnside, essentially ensures that the facility is supplied with peanuts. The Peanut and Byproducts Coordinator, a rotational role held by Pam Reams, is responsible for the “skins” trailer. Her duties include removal and disposal of peanut shells from the property. The peanuts are vacuumed and the shells and skins removed as part of the manufacturing process. In addition, Reams inventories and checks supplies.

In analyzing their job duties and the relationship with the other employees in the unit, I find that the employees in these positions have substantial and regular contact with unit employees and their job duties are functionally integrated with the work of the other unit employees. Accordingly, I find these three positions share a sufficient community of interest to mandate their inclusion in the unit.

Materials Unloading:

There are two off-line site roles designated as Materials Unloading, both of which are rotational roles, currently held by Mike Little and Tim Wimpling. Their job duties include checking and inspecting the trucks delivering molasses and ensuring that the proper paperwork is executed. They also perform required maintenance and repair of the system pumping molasses from the trucks. In essence, their duties primarily involve material handling. Accordingly, I find that their job duties are highly integrated with the product handling and the work of the core employees who comprise the unit. I will, therefore, include these job positions in the unit.

Material Quality Role:

Tonya Lamb holds the Material Quality Role which is currently a rotational role but is in the process of being transitioned to an extended role. Lamb ensures that the incoming materials are in compliance with manufacturing standards. For example, if a tray does not meet specifications, she will contact the supplier regarding the problem. The technicians will document or leave samples of faulty materials for her inspection. When different materials are being used or testing is required, she informs employees of the procedures to run the tests and she will actually run the materials on the floor with the other employees. She may assist the zone coordinators with product issues and verify they have the right product. She is also in charge of some training materials and ensuring that employees are current with their training requirements.

Although the Material Quality Role person may perform other duties, it is clear from the evidence that the principal focus of the position is to maintain quality control of the materials used in the performance of the core work. Thus, Lamb's job is clearly integrated with those of the other technicians in the unit. Accordingly, I find that the Material Quality position is properly included in the unit.

Quality Systems Technician:

Kathy Clark currently holds the Quality Systems Technician rotational role. Her job duties include tracking and categorizing product defects and then communicating the information to the Quality Assurance Manager. She also deals with certain customer complaints and forwards customer calls to the proper recipients. For example, she tracks the complaints if the peanut butter is too runny and contacts the Quality B Level Technicians in the different departments. Clark performs quality checks and works with the zone coordinators in identifying any problems with the equipment or materials. She may also post positive comments, on the bulletin boards, received from customers regarding the products.

Based on the closely related nature of her work, I find that the record evidence supports a finding that the Quality Systems Technician shares a substantial community of interest with other core technicians and is properly included in the unit.

Logistics Project Leader:

The logistics project leader is an extended role position currently occupied by Jimmy Williams. Williams tracks and accounts for the inventory recorded in the appropriate system and ensures that the technicians are informed of how to use the system. He assists in setting the budget for the maintenance tasks by advising management as to how much money is needed over the next fiscal year for the function he performs. The record establishes that Williams volunteers for overtime as well as regularly substitutes in core jobs as frequently as every other weekend, depending on the particular skills and the expertise needed.

Based on the overall record, I find that the Logistic Project Leader, Jimmy Williams, has similar interests with the core technicians as well as performing integrated job functions. His "paper" job functions are similar to those traditionally performed by a plant clerical employee.

Accordingly, I find that this position shares a substantial community of interest with other unit jobs and is properly included in the unit.

Site E & I Coordinator, and Packing E & I and Process E & I:

The Site E & I (electrical and instrumentation) Coordinator is an extended role held by David Baesler, who is also a plant wide zone coordinator. Baesler is a highly-skilled electrical and instrumental technician who troubleshoots and repairs machinery. He ensures that the zone coordinators and the B level technicians are trained in electrical instrumentation. The record shows that he spends a significant portion of his time on the floor handling equipment with problems beyond the capabilities of either the B level technicians or zone coordinators and may spend 30 to 40 percent of his work time in such troubleshooting duties. His job description is similar to that of the zone coordinators and the packing and processing E & I roles, except that he operates on a plant-wide basis. In sum, he is a highly-skilled maintenance employee.

David Stephens and Rick Miller, occupy the Packing and Process E & I extended roles, respectively. Both employees are zone coordinators as well and work closely with Baesler. These three roles involve job functions closely related to and integrated with the work performed by the technicians on the floor in making the product. The E & I roles have regular contact with the other technicians and share a substantial community of interest with the core employees that comprise the unit.

Based on the forgoing and entire record, I find that the Site E & I Coordinator, and the Packing E & I and Process E & I roles are properly included in the unit.

AM Technician Leader, and Engineering Systems/Bldgs and Fac Leader:

The AM (Autonomous Maintenance) Technician Leader is a rotational role currently held by Scott Johnson. Johnson is responsible for training employees in autonomous maintenance and also works with Level B technicians and Zone Coordinators to resolve problems in maintaining the equipment at the proper operational condition. He lists defects, cleans, repairs and is in charge of the "CIL," which stands for Clean, Inspect and Lubricate program.

It is clear from the record that the AM Technician Leader primarily fills a maintenance role which is highly integrated with the functions of the core employees. The record, therefore, requires the inclusion of this position in the appropriate unit.

The Position of Engineering Systems/Bldgs and Fac Leader is held by Jeff Clark and is a rotational role. Clark functions primarily as a handyman and repairs toilets, unclogs drains and repairs water sewage drains in the facility. The record establishes that the Engineering Systems/Bldgs and Fac Leader performs maintenance tasks which are closely related to, and integrated with, the "core" work of the production employees. Accordingly, I find that the Engineering Systems/Building and Facility Leader must be included in the unit found appropriate.

Plant Technical:

Bob Hillard, who also serves as a Logistic Department zone coordinator, occupies this extended plant technical role. In this capacity, Hillard performs vibration analysis for the plant equipment. For example, he uses the equipment to monitor vibration in the fans and corrects any imbalances and is responsible for the data stream system for preventative maintenance. Hillard also works with the E & I coordinator to develop training manuals and performs zone coordinator functions within the logistics department as needed.

Based on the above and the record as whole, I find that the Plant Technical role involves primary maintenance duties which are closely integrated with and related to the other functions performed by the core employees. Accordingly, I find that this position is properly included in the unit.

Operations Safety Leader:

The Operations Safety Leader is a rotational role currently held by Scott Rose. Rose is responsible for A Level technicians' safety training, and generates a spreadsheet documenting the status of their training programs. He ensures that safety inspections are completed in a timely manner and that potential safety problems are appropriately addressed. His role's job description is to "provide site support." I find that the duties of the Operations Safety Leader are integrated with the "core" jobs. Accordingly, Rose shares a substantial community of interest with core employees and his position is properly included in the unit.

Technical Safety Program Leader:

This position is an extended role currently held by Larry Sons, who is also a zone coordinator for the utilities department. Sons repairs floor equipment related to the laser alignment. He also monitors the safety devices which protect the equipment and the employees and ensures that the safety devices are functioning properly. Sons is responsible for "pressure vessel" inspections on a periodic basis and trains other zone coordinators, particularly with respect to laser alignment and pressure vessel inspections.

Based on the foregoing and the record as a whole, I find that the functions of the Technical Safety Program Leader are directly related to and integrated with the functional operation of the plant and that Sons shares a substantial community of interest with the core employees. Accordingly, I will include this extended role in the unit.

Micro/Product Release Technicians:

Ted Saylor and Fay Grider, respectively, are the extended role and rotational role of Mico/Product Release Technicians. Saylor has a higher level of experience and assists in training Grider for the job responsibilities of this role. Both individuals perform tests on the Employer's product during the manufacturing process, including micro-testing of the product, to discover impurities or foreign matter. They run samples pulled by the core technicians and send samples to the lab to grow micro-organisms. If the product exhibits unacceptable levels of micro-organisms, they can recommend that it be withheld from production. The record also reflects that Grider substitutes for core technicians on regular basis.

I find that the record evidence establishes that these two role positions are integrated with the manufacturing process and that the employees share a substantial community of interest with the “core” employees. Accordingly, I will include these roles in the unit.

Product Development Support:

Pat Wireman holds the Product Development Support role on a rotational basis. Wireman works in the PRL (Product Research Lab), a “pilot plant,” running tests on sanitation and plant standards. The job description reflects that the major responsibilities of this role involve obtaining raw materials for the PRL runs; disposing of scrap and by-products; operating PRL equipment for test runs; completing the PRL cleanup list following all runs; maintaining a lab notebook containing all setting and operating parameters from PRL runs and compiling a written report following each PRL run to document findings and test results. Wireman also trains on basic peanut butter analytical methods, performs analysis of PRL products and handles basic maintenance for PRL equipment.

Based on the foregoing and the entire record, I find that the Product Development Support role primarily performs product research and is closely integrated with and directly related to the functions performed by the core unit technicians engaged in product manufacturing. Moreover, I note that as a rotational role position, the product development support role is limited to a 3-year period after which the role participant will return to a core job. Accordingly, I conclude that the employee in this role position shares a substantial community of interest which requires his inclusion in the unit.

Plant Sanitarian:

The Plant Sanitarian is a rotational role position currently occupied by Karen Morton. Morton is responsible for ensuring compliance with sanitation standards, including pest control programs, office cleaning and grounds maintenance. Her job description specifies that this role will coordinate and lead the plant sanitation team in conducting regular audits to ensure consistency in plant sanitation standards. In addition, she is responsible for training and coaching team sanitation technicians throughout the plant and serves as a key resource to those teams. She may go off site to audit vendors for quality control and to ensure that they are complying with the Employer’s sanitation standards. At times she is accompanied by core technicians who help in this function.

Based on the evidence as a whole, I find that the role of the plant sanitarian is closely identifiable as a plant clerical role and that the evidence establishes that it is an integral part of the core work. Accordingly, I will include the plant sanitarian position in the unit.

Plant E & T Owner/Hiring Administrator:

The Plant E & T (education and training) Owner/Hiring Administrator is a rotational role currently held by Steve Cable, whose primary duties consist of updating and developing the training manual. Cable, along with technicians who are on the panel to review employee applicants, makes sure that prospective employees possess the minimal qualifications for employment. Cable dispenses applications to interested people and forwards forms to the

Human Resources Department. He arranges for applicants to be tested and, if they fail the test, sends the requisite letter informing them of the results. He may coordinate panel reviews and assemble panels among the 25 or 30 technicians in the plant who have expressed an interest in being part of the hiring process. During employment interviews, Cable will go through a series of questions in the booklets and, if an applicant does not successfully pass the interview, Cable will send a letter to them informing them of the results.

Cable is in charge of tracking the different skills levels within the plant as well as identifying technicians who qualify for each level. He meets with the training employees on each team and works with the designated zone coordinator to develop a training manual for technologies. The Employer considers Cable an “excellent resource” to the floor and recently he has been called back to work on a core job in the packing department for a 4-week period. Cable also runs the Employer’s store, which is available to employees, where he stocks and replenishes store products and works as the cashier. The job description for the Plant E & T Owner/Hiring Administrator lists functions such as training plant personnel in non-technical areas, coordinating all site training activities, maintaining the training facility and related training equipment and developing strategies for site training.

Based on the above and the record as a whole, I find that this position, although charged with certain non-manufacturing functions, is related to and integrated with the “core” jobs performed by the technicians and that the occupant of this position spends a substantial portion of his time working with the production and maintenance employees. Moreover, there is no contention that the position is supervisory. Accordingly, I find that the position of Plant E & T Owner/Hiring Administrator is properly included in the unit.

Plant Information Systems Role:

Mark Steinpreis holds the Plant Information Systems rotational role. Essentially this position operates the “help desk” with respect to the computer system and assists people in troubleshooting their computer problems. All the technicians have access to a computer and participate in the Employer’s e-mail system. In addition, the job description for this role includes resolving “notes” problems, providing training for users and technical support for the work stations and printers. Steinpreis maintains the workstation hardware inventory, plans for new workstations and software needs and manages the redeployment of workstations within the plant. The record is not clear regarding the amount of time Steinpreis spends on the floor or whether he performs any core work outside of his role duties, but since it is a rotational role, Steinpreis will return to a core job after a 3-year period.

The record overall establishes that the Plant Information Systems role, like the E & T Administrator role, has some duties that are not integrally related with the manufacturing process. However, based on the functional integration of this role with the “core” jobs, the contact with unit employees required by this position, and in view of the rotation system through which the “core” employees hold this position, I find that the Plant Information Systems role shares a substantial community of interest with the core positions. Accordingly, this position is properly included in the unit.

Lab Coordinator:

The Lab Coordinator is an extended role held by Matt Belcher. Belcher works directly with the Process Department Lab technicians who are included in the unit. He is responsible for the appropriate disposal of hazardous waste and calibration and functioning of lab equipment. He also ensures that B Level Technicians are trained in maintaining equipment, assists in the training of A Level Technicians and coordinates the testing work performed by lab technicians.

Based on the record as a whole, I find that the Lab Coordinator performs duties directly related to and integrated with the functional operation of the core manufacturing process and shares a common community of interest sufficient to mandate the inclusion of the lab coordinator in the unit.

Plant Administrative Coordinator:

As previously noted, the parties stipulated to the exclusion of the Plant Administrative Coordinator, which is an extended role currently held by Jill Fitzpatrick, on the basis that she is a confidential employee. The record does not sufficiently support a finding of confidentiality inasmuch as it lacks evidence with regard to how her job is related to labor relations and/or other “confidential matters.” However, I find based on the record as a whole, and an analysis of the applicable law relied on in this decision that her duties are outside the scope of the unit work and similar to office clerical functions. Accordingly, I shall accept the parties’ stipulation with regard to her exclusion from the unit as she appears to be an office clerical employee who does not share a sufficient community of interest with other unit employees to mandate her inclusion in the unit. Accordingly, I will exclude the Plant Administrative Coordinator extended role from the unit.

Jif Cost/Financial Accountant, Payroll/Benefits Coordinator and Financial Capital/Invoice Approval, Plant Buyer and the H S & E Program Leader:

The Jif Cost Financial Accountant position is an extended role currently occupied by Jeff Hutchens. He assists the controller in making sure items are coded correctly, charged to appropriate accounts or cost centers and helps run and organize financial reports for the plant controller. Hutchens reviews time sheets and ensures that employees are properly paid. Hutchens has access to all financial information, including employees’ social security numbers and payroll information. He works in conjunction with the payroll benefits coordinator in order to ensure payroll accuracy. Hutchens is also responsible for the safety shoe program accepting receipts for shoes for which employees are reimbursed. The evidence discloses that he does not have any interaction with the production process.

The Payroll Benefits Coordinator is also an extended role currently held by Pam Reynolds. She also works along with the cost financial accountant. Her responsibilities include reviewing timesheets, transmitting them to the payroll department and answering technician’s questions regarding their benefits. The evidence shows that she and the plant administrative coordinator back each other up with regard to these payroll functions. She prints, distributes and reconciles checks and paystubs of employees.

Charles Traylor holds the Financial Capital/Invoice Approval role, which is a rotational position. Traylor's primary job responsibility is to review and check the coding of timesheets. He also has access to payroll information such as garnishments and child support. Traylor has access to the personnel files and corrects errors in these records. If there is a dispute, regarding personnel records, he consults with the department manager, but he rarely has contact with employees involved in the production process.

The Plant Buyer Role is an extended position currently filled by Bill McIntyre, who assists in contract negotiations with vendors and is responsible for issuing purchase orders to and obtaining signed confidentiality agreements from vendors visiting the plant. He also is responsible for maintaining the required files and documentation for vendors. McIntyre has some limited contact with employees because he works with Ernie Bain, plant storeroom coordinator, and issues purchase orders for that department. Although McIntyre can assist on the production line, the record does not disclose how often or whether he has regularly done so.

The H S & E (Health Safety and Environmental) Program Leader is an extended role occupied by John Helfenberger, who is responsible for the appropriate documentation of OSHA logs and ensuring OSHA standards are met. He performs the paperwork for the "permitting" and works with Operation Safety Leader Scott Rose, to train the technicians in safety functions. Helfenberger works closely with the site medical health services and may complete workers' compensation documents and reports. He is involved in the investigative process of workers' compensation claims and interviews the injured employee and the nurse to determine what occurred and whether the accident constitutes a recordable incident. In addition, he is involved in the design of plant operations and conduct codes for reduction of workers' compensation costs and related insurance charges. Helfenberger works on improvements designed to reduce costs for insurance and safety issues. He is also responsible for ensuring that the appropriate permits are obtained from state agencies and manages those permits. The record is unclear regarding the extent of Helfenberger's interaction with unit employees. The job description for the H S & E program leader shows the role is included in the Human Resources Department with a primary focus on office duties and representing the Employer with other agencies.

Based on the record evidence, I find that the roles of the Jif Cost/Financial Accountant, Payroll/Benefits Coordinator, Financial Capital/Invoice Approval, Plant Buyer and the HS & E Program Leader, whose principal job duties relate to office operations performed within the office(s) and are separate and distinct from the work performed by the technicians on the floor. Thus, these roles are typical office positions which the Board generally exclude from overall production and maintenances units. See, *Mitchellace Inc.*, supra. I, therefore, find these roles are official clerical in nature and I will exclude them from the unit.

Supervisory Exclusions:

The record shows and the parties stipulated that the following individuals are supervisors within the meaning of Section 2(11) of the Act: Director of Peanut Butter Operations, Wayne Braswell; QA Manager, Staci Richardson; Peanut Procurement, Bill Brown; Logistics Manager, Steve Chipko; HR Manager, John Stillwagon; Operations Manager, Jeff Pasquino-Greco; Plant Controller, Jill Smiley; Plant Engineer, Daniel Gunasekaran; Project Engineers, Jonathan Mahanes and Dana Simons; Process Manager, Mark Moore; Packaging Manager, James Haynes; Team Managers, Kim Stechschulte, Brandon Kriebel, Blair North, and

Linda Shouse; Reliability Manager, Terry Collins; and Planning Manager, Patrick Creelman. Accordingly I will exclude them from the unit.

III. CONCLUSIONS AND FINDINGS

Based on the foregoing, the entire record and briefs of the parties, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a Unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including A Level and B Level technicians, Admin techs, lab operators, team leaders, zone coordinators, Material Quality Role, Integrated Planner Roles, AM Technician Leader, Operations Safety Leader, Peanut Systems Leader, Plant Information Systems Role, Micro/Product Release Technicians, Product Development Support Role, Plant E & T Owner/Hiring Admin Role, Engineering Systems/Bldg and Fac Leader, Peanut and By-Products Coordinator, Quality Systems Technician, Materials Unloading Roles, Plant Sanitarian, the Process Maintenance Planner, Shipment Planner, Packing Maintenance Planner, Lab Coordinator, Site E & I Coordinator, Packing E & I Role, Process E & I Role, Packing E & I Role, Plant Technical Role, Plant Store Room Coordinator, Logistics Project Leader and Technical Safety Program Leader, employed by the Employer at its Lexington, Kentucky facility, but excluding the Finance Capital/Invoice Approval Role, the JIF Cost/Financial Accountant, the Plant Administrative Coordinator, the Plant Buyer, the Payroll/Benefits Coordinator and the H S & E Program Leader, all other office clerical employees and all professional employees, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local Union No. 651. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **May 12, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by

facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **May 19, 2006**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 5th day of May 2006.

/s/ Earl L. Ledford, Acting Regional Director

Earl L. Ledford, Acting Regional Director

Region 9, National Labor Relations Board

3003 John Weld Peck Federal Building

550 Main Street

Cincinnati, Ohio 45202-3271

Classification Index

177-8520-1600
440-1760-2420-2000
440-1760-2920-8000
401-7550-0000-0000

